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Chair: Mr. Fathalla (Vice-Chair)

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Mr. Fathalla (Vice-Chair) took the Chair.

The meeting was called to order at 10 a.m.

Organization and other matters, including the adoption of the report of the Working Group on Communications

Draft general comment No. 36 on article 6 of the Covenant (Right to life) (continued) (CCPR/C/GC/R.36/Rev.7)

1. **The Chair** invited Mr. Shany to introduce the amended version of paragraph 65 of the revised draft general comment (CCPR/C/GC/R.36/Rev.7).

Paragraph 65 (continued)

2. **Mr. Shany** (Rapporteur for the general comment) said that the amended text reflected a number of proposals made by Committee members during the preceding discussion on paragraph 65 of the draft general comment. The reference to climate change caused by public and private actors had been introduced into the third sentence. The last sentence had been expanded to include the requirement for States parties to develop and implement substantive environmental standards in accordance with principle 11 of the Rio Declaration on Environment and Development. Mr. Politi had proposed inserting a reference to the preservation of the environment in the third sentence. If the members of the Committee wished to accept that proposal, he would suggest replacing "measures taken by States parties to protect the environment against harm" with "measures taken by States parties to preserve the environment and protect it against harm".

3. **Mr. Politi**, referring to the last sentence, proposed replacing "sustainable utilization" with "sustainable use". As the obligation to notify other States of natural disasters and emergencies was, under international environmental law, related to the notion of consultation, he proposed replacing "provide notification to other States of natural disasters and emergencies" with "notify and consult other States on natural disasters and emergencies". He further proposed replacing "take due note of the precautionary approach" with "have due regard for the precautionary approach".

4. **Mr. de Frouville** said that he proposed amending the third sentence to read: "With a view to fulfilling their obligation to respect and protect the right to life, in particular life with dignity, States parties should take the measures required to preserve the environment and protect it from harm, pollution and climate change caused by public and private actors." It was preferable to highlight States parties' obligations rather than referring to individuals' ability to enjoy the right to life.

5. **Mr. Shany** suggested, as an alternative, replacing "the ability of individuals to enjoy the right to life" with "implementation of the obligation to respect and ensure the right to life".

6. **Ms. Kran** proposed replacing "respect and ensure the right to life" with "respect, protect and fulfil the right to life".

7. **Ms. Brands Kehris** said that she supported the proposals to replace "protect the environment against harm" with "preserve the environment and protect it against harm" and to replace "take due note of the precautionary approach" with "have due regard for the precautionary approach". She also supported the amendment proposed by Mr. de Frouville.

8. **Mr. Shany** said that the verbs "respect and ensure" reflected article 2 of the Covenant. It was unnecessary, in his view, to use the words "respect, protect and fulfil" every time an obligation was mentioned. If the members were in agreement, then the third sentence would read: "Implementation of the obligation to respect and ensure the right to life, in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors."

9. **The Chair** said that he took it that the members agreed with that formulation.

10. **Mr. Shany** said that he concurred with the proposals to replace "utilization" with "use" in the last sentence and to replace "take due note of" with "have due regard for" the precautionary approach. He had reservations regarding the proposed reference to a duty to consult other States on natural disasters and emergencies because, unlike projects that could have a significant impact on the environment of other States, such events were unforeseen developments. He suggested, as an alternative, amending the phrase concerning impact assessments to read "conduct environmental impact assessments and consult with relevant States on activities likely to have a significant impact on the environment". He also proposed inserting a reference to States' duty to provide appropriate access to information on environmental hazards, in line with the provisions of the Aarhus Convention and the jurisprudence of the European Court of Human Rights, according to which the provision of access to information was an obligation under article 8 of the European Convention on Human Rights.

11. **Ms. Brands Kehris** said that she supported Mr. Shany's proposals and would suggest replacing "States parties should engage in sustainable use of natural resources" with "States parties should ensure sustainable use of natural resources" so that the reference would cover other actors, in addition to States parties, and the latter's duty to exercise oversight in such cases.

12. **Mr. Santos Pais** said that natural disasters and emergencies involving, for instance, power plants, had transboundary implications for neighbouring countries. States should therefore not only notify the States concerned but also engage in consultations with them regarding the steps to be taken in order to address the impacts of such disasters.

13. **Mr. Politi** said that the Convention on Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, which had been adopted following the Chernobyl nuclear plant accident, referred to the need for consultations with affected States parties, which were not necessarily transboundary countries. However, he was willing to accept Mr. Shany's proposal.

14. **Ms. Pazartzis** said that, in accordance with principle 18 of the Rio Declaration on Environment and Development, States had an obligation to notify other States of natural disasters and emergencies, but there was no reference to a duty of consultation. She therefore supported Mr. Shany's suggestion in that regard.

15. **Mr. de Frouville** proposed inserting "inter alia" after "States parties should therefore" at the beginning of the sentence so as not to imply that the list of duties was exhaustive.

16. **Mr. Santos Pais** said that he would like to confirm where the reference to consultations would be placed or, in other words, whether it would be linked to environmental assessments, which would be undertaken prior to an event, or to disasters and emergencies, after they had occurred. The latter situation appeared to be the one in which consultations would be crucial.

17. **Mr. Shany** said that the intention was to refer to consultations concerning activities likely to have an environmental impact because there would be no time to undertake consultations in the immediate aftermath of a natural disaster.

18. **Mr. Politi** said he agreed that States' duty to consult other countries regarding activities that were likely to affect them was solidly established in international law. However, high priority was also being accorded in recent times to the duty to consult States following natural disasters and emergencies. He therefore considered that, at the least, the idea of cooperation with a view to limiting the impact of such events should be included in the sentence.

19. **Mr. Shany** suggested the following amendment: "provide notification and assistance to other States concerned", in line with the Rio Declaration.

20. **Ms. Brands Kehris** said that the suggested amendment implied that States experiencing a disaster should assist other States, which might be a good idea but might not be feasible in such a situation.

21. **The Chair**, speaking as a member of the Committee, said that the word "cooperation", as proposed by Mr. Politi, was preferable in his view.

22. **Mr. Shany** suggested the following amendment: "provide notification to other States concerned of natural disasters and emergencies and cooperate with them".

23. **Mr. de Frouville** said that he found the wording "pay due regard to" the precautionary approach to be too weak and proposed replacing it with "implement" or "comply with".

24. **Mr. Shany** said that the precautionary approach was a controversial concept in international law, and a number of States parties had objected to its inclusion in the general comment. The wording "pay due regard" was therefore more prudent.

25. **Mr. de Frouville** said that he had seen no strong objections by States parties. The precautionary approach was in fact a cornerstone of international law.

26. **Mr. Shany** said that principle 15 of the Rio Declaration stipulated that the precautionary approach should be widely applied by States according to their capabilities. He could replicate that wording if members so wished, but it would introduce the concept of progressive obligations with respect to right to life issues. He would therefore prefer to maintain the wording "pay due regard", but it was up to the Committee to decide.

27. **Mr. de Frouville** said that the implications of the principle underlying the precautionary approach under environmental law should perhaps be explained as an alternative to the inclusion of the sensitive term.

28. **Mr. Heyns** said that he was unsure that anything would be gained by merely explaining the content of the principle. The Committee would need to specify the type of action to be taken under such circumstances. He therefore supported the proposed wording.

29. **Mr. Shany**, at the invitation of **the Chair**, said that the proposed amended version of the last sentence was therefore: "States parties should therefore, inter alia, ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment, provide notification to other concerned States of natural disasters and emergencies and cooperate with them, provide appropriate access to information on environmental hazards, and pay due regard to the precautionary approach."

30. *Paragraph 65, as amended, was adopted.*

Paragraph 66

31. **Mr. Shany** said that paragraph 66 dealt with the extraterritorial applicability of the right to life, which had also been addressed to some extent in paragraph 26. It reflected general comment No. 31 on the nature of the general legal obligations imposed on States parties, as well as the Committee's concluding observations and its Views on certain individual communications. He proposed using language similar to that used in paragraph 26 to refer to activities of a State party that had a "direct and reasonably foreseeable impact" on the right to life of persons located outside its territory. It also dealt with protection of the right to life of individuals at sea and persons held in detention facilities outside the territory of the State party.

32. The Governments of Austria and of the Netherlands had urged the Committee to use wording that remained within the scope of standards applied by the European Court of Human Rights in cases concerning a State party's effective control over conduct affecting an individual's right to life. They had expressed concern about cases of rescue at sea which should, in their view, be linked to States' obligations under international law. The Committee's approach was somewhat broader. For instance, it had applied the Covenant to cases in which the use of drones or wiretapping had had a direct impact on persons outside a State party's territory.

33. The Government of Germany had expressed concern about cases in which impact was deemed to serve as a basis for jurisdiction, for instance in cases of search and rescue. It considered that jurisdiction was established only once a person was on board a vessel at sea. The Government of Canada had urged the Committee to apply the rule of extraterritoriality with due deference to the sovereign territory of other States. When an activity fell within the territorial sovereignty of another State, issues would arise concerning the attribution of

responsibility. The Committee had actually decided that more than one State could be held responsible for a violation, but that principle should be applied in a manner that took into account the complexities associated with a multiplicity of actors.

34. The Governments of France and Norway had also expressed the view that the Committee was adopting a broader approach to extraterritoriality than that of the European Court of Human Rights. The Government of Norway was of the view that the Court's case law should guide the Committee's definition of the scope of application of the Covenant, and it opposed the notion of jurisdiction over persons on the high seas.

35. The Government of the United States of America had underscored its opposition to the extraterritorial applicability of the Covenant. It regarded the two conditions contained in article 2 (1), "within its territory and under its jurisdiction", as cumulative rather than alternative. It also opposed the idea of jurisdiction over registered ships and aircraft in that regard.

36. Two academics from the University of Essex had proposed that the paragraph should focus on the impact on the right to life rather than the impact on persons. He would suggest an amendment reflecting that proposal. He also supported an amendment to the first sentence proposed by the American Civil Liberties Union (ACLU) and other non-governmental organizations (NGOs) that focused on the capacity to render assistance. In addition, Amnesty International and other NGOs had urged the Committee to expand its approach to the concept of the impact on the right to life beyond the bounds of "a direct and significant impact".

37. He would like to propose a number of amendments in the light of the above comments from stakeholders. In the first sentence, the phrase "all persons over whose enjoyment of the right to life it exercises power" could be replaced with "all persons over whom it exercises power". In the second sentence, the words "who are nonetheless impacted" could be replaced with "whose right to life is nonetheless impacted". In addition, "direct, significant and foreseeable" could be replaced with "direct and reasonably foreseeable". In the third sentence, the words "located in territories which are under their effective control" could be replaced with "located in places which are under their effective control". In the fourth sentence, the words "or flying their flag" could be inserted after "marine vessels or aircraft registered by them". The remainder of the sentence could be simplified to read: "and of those individuals who, due to a situation of distress at sea, are entitled under relevant international norms governing rescue at sea to obtain assistance from vessels of the States parties". Lastly, he proposed including a reference in the footnote to article 98 of the United Nations Convention on the Law of the Sea and to chapter V, regulation 10, of the International Convention for the Safety of Life at Sea.

38. **Mr. Zimmermann** said that he wondered whether the proposed amendment to the first sentence might not limit its scope. Under the current phrasing, it sufficed for only one specific Covenant right, the right to life, to be under the effective control of the State party, which brought to mind the decision of the European Court of Human Rights in the Bancovic case.

39. **Mr. Heyns** said that he supported Mr. Zimmermann's view that the words "over whose enjoyment of the right to life it exercises power or effective control" should be retained because requiring control over persons in general rather than focusing on people's right to life would dilute the statement.

40. **Mr. de Frouville** said that he also supported Mr. Zimmermann's proposal, particularly in the light of the fact that the jurisprudence of the European Court of Human Rights had evolved towards an acceptance of an association of rights in terms of jurisdiction.

41. **Mr. Ben Achour** said that, in his view, there was no need to include the phrase "that is, all persons over whose enjoyment of the right to life it exercises power or effective control" since that principle was evident from the wording of article 6 of the Covenant.

42. **Mr. Shany** proposed that, in line with the amendment suggested by Mr. Zimmermann, the second sentence should read: "This includes persons located outside any territory effectively controlled by the State whose right to life is nonetheless impacted by its military or other activities in a direct and reasonably foreseeable manner."

43. **Mr. de Frouville**, supported by **Ms. Brands Kehris**, said that, while he agreed with the Rapporteur's proposals, it might be advisable to make specific mention of the eventuality of one State's action infringing the right to life of persons outside its territory through cooperation with or assistance to another State or entity.

44. **Mr. Heyns** said that he agreed with the deletion of the word "significant". The phrase "direct and reasonably foreseeable" might not cover cooperation and assistance, however; an additional sentence might therefore be required to that end. One NGO had proposed the inclusion of the sentence "States also have obligations under article 6 not to provide assistance or cooperation in situations when they know, or ought to know, that there are substantial grounds for believing that there is a real risk that the provision of that assistance or cooperation would aid or assist in an article 6 violation."

45. **Mr. Ben Achour** said that he agreed with Mr. de Frouville and Mr. Heyns because the wording proposed by the Rapporteur was too broad, especially in the light of the fact that the Committee had adopted a precise position on the matter in some of its Views.

46. **Mr. Zimmermann** said that he understood the phrase "military or other activities" to mean military or non-military activities by the State. Widening the scope of that paragraph to encompass the idea of aiding and abetting another State to commit a violation of article 6 raised a number of very delicate issues which could not be addressed in a single sentence.

47. **Mr. Shany** said that he agreed with the insertion of a sentence dealing with the obligations of States not to assist with activities of other States or non-State actors which would violate the right to life. However, he shared some of Mr. Zimmermann's concerns, because the question of aid or assistance fell more within the purview of article 16 (1) of the articles on responsibility of States for internationally wrongful acts of the International Law Commission. He therefore proposed the wording, "States also have obligations under international law not to assist with activities undertaken by other State or non-State actors that violate the right to life", with a footnote citing the aforementioned provision of the articles on responsibility of States for internationally wrongful acts.

48. **Ms. Pazartzis** said that the Committee's jurisprudence should also be cited in a footnote. It was important to rely primarily on the Committee's own case law rather than on other international instruments.

49. **Mr. Ben Achour** said that the vital principle which had been established in some of the Committee's jurisprudence and which should therefore be expressed in the paragraph was the responsibility of a State for activities in the territory of another State that remained under the direct or indirect control of the first State.

50. **Mr. de Frouville** said that, although he supported the wording proposed by the Rapporteur, he disagreed that the obligation not to aid or abet a State in violating article 6 stemmed essentially from the International Law Commission's articles on responsibility of States for internationally wrongful acts. In *Munaf v. Romania* (communication No. 1539/2006) and *Yassin v. Canada* (communication No. 2285/2013), the Committee had found that extraterritorial violations of the right to life could occur owing to the causal chain linking an action attributable to one State with an action attributable to another State or another actor.

51. **Mr. Shany** said that the communications mentioned by Mr. de Frouville could be cited in a footnote to substantiate the principle that there could be direct and reasonably foreseeable activity involving other countries. In the first part of the third sentence, he would replace "territories" with the broader term "places". He proposed that the fourth sentence should read: "They are required to respect and protect the lives of all individuals located on marine vessels or aircraft registered by them or flying their flag and of individuals who, due to a situation of distress at sea, are entitled under the relevant international norms governing rescue at sea to obtain assistance from vessels of the States parties."

52. **Mr. de Frouville** said that that rather ambiguous wording appeared to suggest that some individuals might not be entitled to such protection. He would prefer simpler wording that underscored States' obligation to protect the life of all persons, including those in distress at sea, under the pertinent international rules on rescue at sea, accompanied by a footnote citing the United Nations Convention on the Law of the Sea.

The meeting was suspended at 11.35 a.m. and resumed at 12.05 p.m.

53. **Mr. Shany** said that the two elements which had to be covered were distress and the duty to protect under the relevant international norms. Hence he proposed that the text of paragraph 66 should read:

> In light of article 2, paragraph 1, of the Covenant, a State party has an obligation to respect and to ensure the rights under article 6 of all persons who are within its territory and all persons subject to its jurisdiction, that is, all persons over whose enjoyment of the right to life it exercises power or effective control. This includes persons located outside any territory effectively controlled by the State whose right to life is nonetheless impacted by its military or other activities in a direct and reasonably foreseeable manner. States also have obligations under international law not to aid or assist activities undertaken by other State and non-State actors that violate the right to life. Furthermore, States parties must respect and protect the lives of individuals located in places which are under their effective control, such as occupied territories, and in territories over which they have assumed an international obligation to apply the Covenant. States parties are also required to respect and protect the lives of all individuals located on marine vessels or aircraft registered by them or flying their flag and of those individuals who find themselves in a situation of distress at sea covered by their relevant international law obligations on rescue at sea. Given that the act of arrest or detention brings a person within a State's effective control, States parties must respect and protect the right to life of all individuals arrested or detained by them, even if held outside their territory.

54. **Ms. Pazartzis** said that she was comfortable with the proposed text, apart from the penultimate sentence, where it might be more accurate to replace "covered by" with "in accordance with" in order to highlight the fact that the Committee was referring to international obligations that might be applicable to some States parties.

55. **Mr. de Frouville** said that the obligations on rescue at sea were not only treaty-based but also a rule of customary international law. He would support the idea of going even further in order to make it clear that the duty to protect entailed an obligation to rescue persons in distress at sea in accordance with States' international obligations.

56. **Mr. Politi** said that he agreed with Ms. Pazartzis but would also delete the word "law" and refer only to "international obligations".

57. **Ms. Pazartzis** said that, although the word "relevant" was not restrictive, she could agree to its deletion.

58. **Ms. Brands Kehris** said that the phrase "even if held outside their territory" might provide a loophole and that it would therefore be better to use the broader term "deprivation of liberty" instead of "arrest or detention".

59. **Mr. Shany** said that he agreed with the proposals made by Ms. Pazartzis and Mr. Politi and concurred that the obligations in question could indeed stem from many sources, not only the law of the sea. In order to address the previous speaker's concerns, he would replace "arrest or detention" with "deprivation of liberty".

60. *Paragraph 66, as amended, was adopted, with minor drafting changes.*

Paragraph 67

61. **Mr. Shany** said that paragraph 67 dealt with the interplay of human rights law and international humanitarian law in the context of the right to life and laid down the principle of the complementary application of the two bodies of law. Some States had felt uneasy about the very idea that the Committee was dealing with international humanitarian law. The Governments of Canada and the United Kingdom, for instance, were of the view that international humanitarian law was *lex specialis* and that the Committee should not be superimposing human rights law on international humanitarian law. That was not, however, the Committee's understanding of the advisory opinion in *Legality of the Threat or Use of Nuclear Weapons*. The *lex specialis* nature of international humanitarian law did not in reality render article 6 of the Covenant inapplicable.

62. Since the Government of France had challenged the proposition that a failure to take appropriate steps to prevent all collateral damage could be deemed a violation of the right to life, he would propose language that would accommodate that concern while reflecting the principle of international humanitarian law that States must try to minimize such damage. Many States had been strongly opposed to disclosure on the grounds that it might undermine military operations, and the Government of Norway had fully supported the retention of the qualifying phrase "subject to compelling security considerations" in that connection. He would try to simplify the text to address those concerns. The Government of the Netherlands had felt that the phrase "entailing a risk" in the fourth sentence was too weak and that the standard should be made more stringent by the addition of the adjective "serious".

63. The Government of the Netherlands and a number of NGOs had questioned the wording "uses of lethal force authorized ... by international humanitarian law". He would propose language to deal with that matter. Professor Adil Haque had taken issue with the notion that international humanitarian law in principle authorized the use of force and questioned the use of the words "in principle". The Committee was not, however, setting out a principle; it was merely referring to a generally applicable concept. Situations could arise which were lawful under international humanitarian law but which still entailed a violation of the right to life. Professor Noam Lubell and Dr. Daragh Murray, as well as a civil society organization, had been of the opinion that the Committee should make it clear that there could be situations in an armed conflict in which human rights law would constitute the initial reference point. It might therefore be necessary to deal with the reference to "the conduct of hostilities" in the first sentence accordingly.

64. Amnesty International and a number of other NGOs had suggested that reference should be made to the important principle of international humanitarian law according to which objects indispensable to the survival of the civilian population should not be targeted. Another organization had taken the view that the text should not refer only to persons hors de combat because some norms of international humanitarian law protected combatants from the use of weapons that caused superfluous injury and unnecessary suffering.

65. He therefore suggested that the first sentence of paragraph 67 might read: "Like the rest of the Covenant, article 6 continues to apply also in situations of armed conflict to which the rules of international humanitarian law are applicable, including to the conduct of hostilities." That modification would make it clear that the draft general comment was referring generally to situations where international humanitarian law was applicable but also to certain circumstances in which human rights law would take priority.

66. That point could be further underscored in the second sentence by inserting the phrase "when the situation calls for the application of international humanitarian law" between the phrase "While rules of international humanitarian law may be relevant for the interpretation and application of article 6" and the phrase "both spheres of law are complementary, not mutually exclusive".

67. With regard to the third sentence, he proposed replacing the words "authorized and regulated by and complying with" simply with the word "consistent" and adding, "with international humanitarian law" after the phrase "and other applicable international law norms" in line with Professor Adil Haque's suggestion. That would provide for the possibility that other norms might inform the question as to whether the uses were arbitrary or not. In addition, the words "in principle" could be replaced with "generally" in order to do away with any confusion about the meaning of that phrase.

68. Concerning the next sentence, the Committee would need to decide whether to insert the word "serious", as suggested by the Government of the Netherlands. In any event, it was important to retain the element of risk because that was what established the link to article 6 of the Covenant. The reference to "persons hors de combat" had also been questioned; that concern could be addressed by replacing that phrase with the broader formulation of "other persons enjoying protection under international humanitarian law". He also proposed using language from the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts of 8 June 1977, often referred to as Protocol I, in order to add "and objects indispensable to the survival of the civilian population" after the words "the targeting of civilians, civilian objects". Furthermore,

"measures of precaution to prevent collateral death" was perhaps too strong; replacing "prevent" with "avoid or minimize" might provide a more accurate articulation of that standard of international humanitarian law.

69. In the next sentence, dealing with disclosure, he suggested that the Committee should use the more open-ended phrase "where possible" instead of the somewhat controversial wording "subject to compelling security considerations". As concerns had been raised regarding the consistency of the words "non-lethal alternatives" with international humanitarian law, since there was no prohibition against killing combatants, he would suggest using the term "less harmful alternatives", which would not raise questions about how the proportionality standard would apply.

70. **Mr. Zimmermann**, referring to the third sentence, said that it was unclear what the difference between "generally" and "in principle" might be. In the advisory opinion on *Legality of the Threat or Use of Nuclear Weapons*, the Court had found that the term "arbitrary" was informed and defined by the applicable rules of international humanitarian law. It was therefore hard to imagine a situation in which the deprivation of the right to life took place in accordance with international humanitarian law in a situation of armed conflict but would still be arbitrary.

71. **Mr. Shany** said that, for him, the phrases "in principle", "as a rule" and "generally" were synonymous, but the use of either of the latter two would avoid misunderstandings. At its next session, the Committee would be examining the *jus ad bellum* issue, which was the only clear instance where an act could be lawful under international humanitarian law but unlawful under other norms of international law. In some contexts, refugee law, the law of the sea or international criminal law could be relevant. It was therefore safe to leave room for that possibility. That would be in line with the Committee's view that none of those branches was entirely isolated from the others.

72. **Mr. Politi**, supported by **the Chair** in his capacity as a member of the Committee, said that there was no need, in the fourth sentence to emphasize that the risk should be serious.

73. **Mr. Ben Achour**, supported by **Mr. Politi** and **Ms. Brands Kehris**, said that it would be wise to avoid the word "minimize", as it suggested that collateral death was not prohibited. The next question was to choose between "avoid" and "prevent". If the word "minimize" were not used, then he would prefer "avoid" because it correctly captured the principle in question.

74. **Mr. de Frouville** said he wondered whether the third and fourth sentences did not demonstrate the limits of the complementarity of human rights law and international humanitarian law. While it was true that the arbitrary nature of deprivation of life must be determined on the basis of the criteria laid down by international humanitarian law, the central reason in that body of law for the prevention of collateral damage was not to protect the right to life but to achieve a balance between the risk of damage and military exigencies. For that reason, he suggested the deletion of the reference to collateral damage.

75. **Mr. Zimmermann**, supported by **Mr. Heyns**, said that the phrase "avoid or minimize" should be retained as it came from article 57 (2) (ii) of Protocol I.

76. **Mr. Ben Achour**, supported by **Mr. Santos Pais** and **Mr. Politi**, said that the mere fact that that language was drawn from Protocol I was no reason to keep the word "minimize". That instrument was not necessarily directly connected with the definition of the right to life within the meaning of the Covenant. In point of fact, the text of paragraph 67 expanded on the Geneva Conventions and the protocols thereto.

77. **Ms. Pazartzis** said that the message which the Committee must convey was that practices inconsistent with international humanitarian law entailing risks to the lives of civilians and other persons who enjoyed the protection of that body of law violated article 6 of the Covenant. Removing the list of examples might bring the text more closely into line with the Covenant.

78. **Mr. Shany** said that he concurred with Ms. Pazartzis. As he also understood the concerns of Mr. Ben Achour, he proposed that the phrase "to avoid or minimize collateral deaths of civilians" should be replaced with "to avoid excessive harm to civilians", which

reflected the sense of article 57 of Protocol I and was a general principle of international humanitarian law.

79. **Ms. Brands Kehris**, supported by **Mr. Heyns**, said that she approved of the Rapporteur's proposal and suggested that the addition of the word "also" before "violate" would make it clear that the position being adopted was that such practices violated international humanitarian law and also violated human rights law.

80. **Mr. Zimmermann** said that he wondered whether the text made it clear that there was an obligation to avoid any and all collateral harm if possible.

81. **Mr. Shany** said that the purpose of the text was to establish that adequate measures of precaution had to be taken to avoid excessive harm, which was an allusion to the obligation embodied in article 57 of Protocol I. He would circulate a fresh version of the text at the next meeting on general comment No. 36.

The meeting rose at 1 p.m.